FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted]

DECISION

MPA/143150

PRELIMINARY RECITALS

Pursuant to a petition filed August 16, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on October 09, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the evidence offered on behalf of Petitioner demonstrates that a prior authorization request for physical therapy meets the standards necessary for Wisconsin Medicaid approval.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]
c/o [redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Pamela J. Hoffman, PT, DPT, MS by written response
OIG
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. A prior authorization request (PA) seeking Wisconsin Medicaid payment for physical therapy (PT) for Petitioner was filed on, or about, June 20, 2012 by his provider, Healthreach Rehabilitation Services, Inc. That PA sought the Medicaid payment for 52 sessions of physical therapy (PT) commencing July 3, 2012 at a frequency of twice per week. The cost was noted to be $8736.00.
3. The Department of Health Services' Office of the Inspector General (OIG) denied this prior authorization request maintaining that there is not sufficient evidence of functional limitations that warrants need for professional therapy to the extent requested but did agree that therapy was warranted for development of a home exercise program and to assess progress with that program. Thus the department modified its approval this request limiting it to once every two weeks (13 sessions) instead of the requested twice a week for 26 weeks
4. Petitioner was born at 26 weeks and weighed 1 ½ pounds at birth. His mother had substance abuse problems and was unable to care for him. He was removed from her care by child protective services, placed in foster care and eventually adopted by Mr. and Mrs. Z. Mr. Z has passed away. Mrs. Z cares for Petitioner and her only source of income is Social Security benefits. Adoption assistance and social security benefits are paid for the benefit of Petitioner and go into a trust fund until he is an adult.
5. Petitioner is diagnosed with cerebral palsy, increased right leg muscle tone, attention deficit hyperactivity disorder and is status will post bilateral appeal to court link living in August 2011 due to pain in his knees and lower back and decreased income range of motion. Following the heel cord surgery in August 2011 Petitioner had both extremities in casts for 5 weeks. His surgeon recommended physical therapy at a frequency of 1-2 times per week during the casting, 3-4 times per week for 6 to 8 weeks after the casts were removed and a gradual decrease to 2-3 times per week for 6 to 12 months. Petitioner also suffers from pain in both heels as well as significant growing pains. His right side is the most affected by his physical diagnosis.
6. Petitioner is 12 years of age. Though he is in physically very active he suffers from metabolism difficulties and weighs just under 200 pounds.
7. He is in the sixth grade. He is a parochial school and has no physical therapy services available to him through school. His mother was able to enroll him in a YMCA day program during the summer of 2012 but does not have the resources to continue programming at the YMCA.

DISCUSSION

When determining whether to approve therapy, the DHCAA must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS 107.02(3)(e)*:

> (e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:
> 1. The medical necessity of the service;
> 2. The appropriateness of the service;
> 3. The cost of the service;
> 4. The frequency of furnishing the service;
> 5. The quality and timeliness of the service;
> 6. The extent to which less expensive alternative services are available;
> 7. The effective and appropriate use of available services;
> 8. The misutilization practices of providers and recipients;

9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or
private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
(b) Meets the following standards:
1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.
Wis. Admin. Code, §DHS 101.03(96m).

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services,* 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it is a Petitioner's burden to demonstrate that s/he qualified for the requested continued services by a preponderance of the evidence. It is not the Department's burden to prove that s/he is not eligible. Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. It is not enough to demonstrate a benefit; rather, all of the tests cited above must be met.

The Office of the Inspector General's (OIG) detailed explanation for the denial is found in its letter dated September 20, 2012. Exhibit # 3. I am not going to reproduce that whole summary here but as I understand the rationale, the OIG concluded that the evidence submitted on behalf of Petitioner did not demonstrate that the needs of the professional therapist are needed. It notes that the PA request mentions keeping up with peers as a reason for the request and that this is not a functional limitation. It notes that he is independent in his activities of daily living. It does allow that Petitioner might need another surgery on his ankles without adherence to an exercise program but that an exercise program can be set up by the professional therapist and implemented at home.

While I understand the OIG position and agree that keeping up socially and with peers is not a functional limitation for PT purposes (see, e.g., *Wis. Admin. Code, §DCF 107.16(20(a))* , I am making a further modification and approving an additional 13 physical therapy sessions at frequency of once a week because I am persuaded that there are medical reasons for some additional PT. The reasons that I am approving these special sessions are as follows. It is not apparent that Petitioner's mother has the ability to provide the home exercise program to the degree envisioned by the Department. Petitioner overcompensates with his adaptations for pain and his right side deficits to the point that he

causes additional physical problems and the professional therapist helps minimize that to keep him moving properly. Additionally, his mother's credible testimony was that he has regressed without PT and that testimony is buttressed by the need for the August 2011 surgery following a 2010 discontinuance of PT. While someone without his limits might recover from the August 2011 surgery more rapidly, Petitioner has not. His range of motion in his right ankle is at best neutral. Finally, Petitioner is growing and developing and PT at this point is necessary to minimize the effects of his physical problems to optimize his potential for independence as he grows.

NOTE: Petitioner's mother should be aware that Petitioner's provider will not receive a copy of this Decision. In order to have the physical therapy approved, Petitioner must provide a copy of this Decision to Healthreach Rehabilitation Services, Inc. The provider must then submit a new prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

That the evidence offered on behalf of Petitioner does demonstrate by a preponderance of the evidence that an additional 13 physical therapy sessions may be paid for by the Wisconsin Medicaid program.

THEREFORE, it is ORDERED

That Petitioner's provider, Healthreach Rehabilitation Services, Inc., is hereby authorized to provide the Petitioner with 13 additional physical therapy sessions at a frequency of once a week, and to submit its claim, along with a new prior authorization request and a copy of this Decision, to ForwardHealth for payment.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that

Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee, Wisconsin, this 14th day of November, 2012

_____

David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on November 14, 2012.

Division of Health Care Access And Accountability